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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

**Public Copy**

File: WAC 99 006 51693 Office: California Service Center Date:

APR 13 2001

IN RE: Petitioner:  
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a combinatorial chemistry/drug discovery and design firm. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The Form I-140 petition indicates that the petitioner seeks to employ the beneficiary permanently in the United States as an associate scientist. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is

recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition.

The petitioner claims to have satisfied two of the criteria:

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

The beneficiary is the co-author of five articles submitted with the petition. Three of these articles appeared in the Chemical Journal of Chinese Universities. The record contains no evidence that this journal circulates internationally. The beneficiary co-wrote the remaining two articles while employed by the petitioner. One of these articles, submitted for publication in Rapid Communications in Mass Spectrometry, is labeled "marked proof," and contains several proofreader's marks. There is no indication that this article had actually been published at the time the petition was filed. The remaining article does appear to have been published, in Combinatorial Chemistry & High Throughput Screening which appears to have an international circulation. The petitioner has not established that this article has won recognition as a particularly significant work in the field.

*Evidence of the alien's original scientific or scholarly research contributions to the academic field.*

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

Dr. Sepehr Sarshar, now of Agouron Pharmaceuticals, Inc., formerly worked with the beneficiary at Ontogen Corporation. Dr. Sarshar states:

[The beneficiary] was able to devise a system which would allow rapid purification and analysis of thousands of compounds generated by chemists at Ontogen Corporation. This was a major

breakthrough and helped accelerate the drug discovery process at Ontogen Corporation. Some of the discoveries he made at Ontogen Corporation will have direct impact on the level of current research in the United States. He has optimized a new technique in which auxiliary gas is used to break up trifluoroacetic acid clusters in mass spectra. . . . He is a pioneer in flow injection analysis which allows one to characterize a compound in less than 30 seconds.

Dr. [REDACTED] a consultant with Advanced Bioremediation Services, also worked with the beneficiary at Ontogen. Dr. Reynolds asserts:

We have utilized his design and laboratory skills in the chemical instrumentation development of parallel chromatography-mass spectrometry high speed analysis of new synthesized drugs. His contribution to this advance will greatly increase the robotics-driven synthesis, analysis, purification, and biological testing of promising new drug candidates. Currently, his approach is on the "cutting edge" of the technology and will offer a breakthrough in drug candidate analysis and purification. To my knowledge, his approach . . . is not being duplicated in any other laboratory. If successful, the advance will be one of the most important links in the quantum leap forward in drug history.

Dr. [REDACTED] a principal scientist at Ontogen Corporation, indicates that one area of interest at Ontogen has been multiple drug resistance ("MDR"). Dr. [REDACTED] states:

MDR is recognized as the leading cause of chemotherapeutic failure in cancer. A large percentage of patients exhibiting the MDR phenomenon have been shown to overexpress an ATP-dependent, transmembrane protein known as P-glycoprotein (Pgp). . . . At Ontogen, we set out to initiate a discovery program aimed at discovering novel, nontoxic inhibitors of Pgp and therefore MDR reversing agents. . . .

[The beneficiary] has played an important and significant role in pharmacokinetic studies of MDR project. He has designed an on-column concentration analytical model with single ion monitoring. . . . He also designed small particle size packing, fast gradient, short column analytical method for quantitation of the MDR reagents for pre-clinical studies. . . . The significance of [the beneficiary's] pre-clinical analytical model on LC-MS is going to become more obvious during the clinical metabolism mechanism studies. This will accelerate MDR drug discovery processes.

We note that all of the above letters, addressed to the Service, are dated October and November 1997, nearly a year before the petition's October 1998 filing date; yet on the Form I-140 petition in the present record, the petitioner indicates that no previous

immigrant visa petition has been filed on the beneficiary's behalf.

The above letters, from current or former Ontogen staff, indicate that the significance of the beneficiary's work will become apparent at a later date. Although the letters are a year older than the petition, there is no indication that the beneficiary's work at Ontogen has ever won him any recognition among researchers who have never worked for Ontogen.

A fourth, more recent letter is from Dr. [REDACTED] the petitioner's director of Analytical Chemistry, who states:

[The beneficiary] is an actively participating and contributing member of one of the first projects at [the petitioning company] to successfully reach a milestone in a drug discovery collaboration with Roche Biosciences. . . . [The beneficiary] is a co-inventor on a patent pending in the area of high throughput analysis and purification. His contributions in this areas have been widely embraced by the pharmaceutical industry as both innovative and powerful solutions to solving the analysis/purification bottleneck in drug discovery.

Although Dr. [REDACTED] asserts that the beneficiary's "contributions . . . have been widely embraced by the pharmaceutical industry," the record contains no evidence to show that the beneficiary's work has attracted any attention outside of corporations that have employed him.

The director instructed the petitioner to submit further evidence to satisfy at least two of the six regulatory criteria. In response, the petitioner has submitted a complete copy of the initial submission, with a note from counsel indicating that the initial submission contained the desired evidence.

The director denied the petition, stating that the record "does not support a finding of outstanding ability that is beyond that of any other Associate Scientist," and that the evidence does not establish that the beneficiary enjoys international recognition; the recognition established in the record is limited to past and present employers. The director also noted that the beneficiary was not the sole author of published articles in internationally-circulated journals.

On appeal, counsel argues that published articles are routinely the product of collaboration rather than the work of a sole author. The record supports this assertion, and we note that the regulations do not require sole authorship of published materials.

The petitioner submits copies of previously submitted documents, as well as a new witness letter and evidence of new published articles and conference presentations by the beneficiary. These new writings did not exist as of the petition's filing date, and therefore they cannot establish that the petition was approvable as

of that date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The new letter is from Dr. [REDACTED] editor-in-chief of Rapid Communications in Mass Spectrometry, who states:

I came to learn of [the beneficiary] through his association with [the petitioner] and recognized immediately the import of his seminal contributions in the area of high throughput mass spectrometry. The groundbreaking publication . . . on high throughput parallel FIA-MS analysis of Combinatorial Libraries by [the beneficiary] et. al., has led to a steady stream of publications by others in the field whose focus has been on parallel analysis by mass spectrometry. . . .

[The beneficiary's] paper describes a highly innovative method for increasing sample analysis throughput, critical to the success of pharmaceutical drug discovery. In fact, to the best of my knowledge it is the highest throughput mass spectrometry-based technique available today.

While Dr. [REDACTED] speaks highly of the beneficiary's accomplishments, his letter simply does not offer sufficient information to allow an accurate reading of the beneficiary's reputation throughout the field. For instance, the vague reference to "a steady stream of publications by others in the field" does not identify these other researchers or the journals in which they have published their findings, nor does it indicate how many such articles have appeared. A string of articles in high-profile journals such as Science or Nature carries more weight than articles in narrow-interest publications with much more limited circulation, and evidence of dozens of citations would be more persuasive than evidence of three or four such citations. As the record stands, we have no first-hand evidence to clarify these important points.

The petitioner, on appeal, notes the director's finding that the record "does not support a finding of outstanding ability that is beyond that of any other Associate Scientist." The petitioner argues that there is no requirement in the statute or regulations that the beneficiary's abilities exceed those of others in the field. The statute (at section 203(b)(1)(B)(i) of the Act) and the regulations (at 8 C.F.R. 204.5(i)(3)(i)) require that a beneficiary seeking this visa classification "is recognized internationally as outstanding." This visa classification has priority over the lower classification pertaining to aliens of exceptional ability in the sciences. Thus, the statutory construction demonstrates a correlation between international recognition as outstanding, and a degree of ability which exceeds "exceptional ability." The petitioner does not explain how a researcher of average or otherwise unremarkable ability could nevertheless be

"internationally recognized as outstanding," unless that term is defined so broadly as to include every researcher who has published original work in an internationally circulated journal.

The petitioner argues that evidence has been submitted to satisfy two of the six regulatory criteria, and therefore the director has no discretion to deny the petition. We must, however, consider the content of the evidence submitted to satisfy those regulations.

By way of example, one of the regulatory criteria regards "published material in professional publications written by others about the alien's work in the academic field." If a researcher announces significant new findings, which are then thoroughly discredited by further investigation, the scientific literature will be filled with published articles announcing the refutation of the researcher's conclusions. While these articles fulfill the letter of the regulation, they plainly do not meet the spirit of the regulation; one cannot realistically contend that a researcher whose major finding has been completely discredited is nevertheless "outstanding." This example is not an implausible, hypothetical one; the controversy surrounding so-called "cold fusion" in the early 1990s followed this pattern. We use this example not to suggest that the beneficiary's findings have been discredited, but simply to illustrate a critical point: the regulations list the types of evidence which can support a claim, but not every piece of evidence which fits into one of these categories carries equal weight in establishing that a given alien is internationally recognized as outstanding in a given field.

We note that the petitioner has identified itself as a company involved with "drug discovery and design," but the record does not reflect a single example of a drug discovered or designed by the petitioner (with or without the beneficiary); the bulk of the evidence submitted to establish the petitioner's "documented accomplishments in an academic field" concerns the petitioner's quest for venture capital. Obtaining financial backing is not an accomplishment in an academic field; rather, this activity highlights the fact that the petitioner is a very new company which is (or until very recently was) at a "start-up" phase. The petitioner has since been acquired by a larger corporation.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of chemistry. Therefore, the petitioner has not established that the beneficiary qualifies for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.